

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARITZA MARTINEZ-CARABALLO,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	NO.:
vs.	:	
BJ'S WHOLESALE CLUB, INC.,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	
	:	
	:	
	:	

NOTICE FOR REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1441

Defendant, BJ's Wholesale Club, Inc., hereby submits notice to the United States District Court for the Southern District of New York for the removal of the above entitled action to this Honorable Court and, in support thereof, respectfully represents:

1. Defendant, BJ's Wholesale Club, Inc. (the "Club"), is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business located in the Commonwealth of Massachusetts.

2. Upon information, knowledge and belief, Plaintiff, Maritza Martinez-Caraballo, is an adult individual and citizen and resident of the State of New York, residing in the Borough of New York, City of New York.

3. At all times material hereto, the Club was duly registered to do, and was doing, business in the State of New York.

4. On or about May 25, 2020, Plaintiff commenced the above action, by filing a Summons and Complaint (collectively, the "Complaint"), true and correct copies of which are

attached hereto as **Exhibit “A.”** Plaintiff seeks damages against the Club for personal injuries she allegedly sustained in a trip and fall accident occurring at the Club located at 300 Route 17 North, East Rutherford, New Jersey 07073 on May 26, 2018. Plaintiff’s Summons states that Plaintiff resides at 460 Audubon Avenue, New York, New York 10040.

5. At the time the action was filed, the Club did not have notice that the value of Plaintiff’s claims exceeded Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

6. On or about June 30, 2020, the Club received the Complaint.

7. On April 9, 2021, the Club filed its Answer to the Complaint. A true and correct copy of the Club’s Answer is attached hereto as **Exhibit “B.”**

8. On April 9, 2021, the Club filed and served a Notice to Admit, seeking for Plaintiff to admit or deny whether she alleges that her damages, if proven at trial, are in excess of Seventy-Five Thousand (\$75,000.00) dollars, exclusive of interest and costs. A copy of the Club’s Notice to Admit is attached hereto as **Exhibit “C.”**

9. To date, Plaintiff has failed to respond to the Club’s Notice to Admit. As a result, by failing to respond within the twenty (20) day time period prescribed by Section 3123 of the New York Civil Practice Law and Rules (“CPLR”), all allegations contained therein are deemed admitted by operation of law. See CPLR § 3123.

10. Diversity of citizenship exists between Plaintiff, a citizen and resident of the State of New York, and the Club, a corporation organized and existing under the laws of the State of Delaware and having its principal place of business in the Commonwealth of Massachusetts.

11. Complete diversity of citizenship exists between the parties and removal is proper pursuant to 28 U.S.C. § 1441, *et seq.*

12. 28 U.S.C. § 1446(b) reads, in pertinent part, that:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 [diversity of citizenship] of this title more than 1 year after commencement of the action.

13. This Notice of Removal is timely under 28 U.S.C. § 1446(b) as it is filed within thirty (30) days after the Club's first notice that Plaintiff's claimed damages, if proven, are valued in excess of Seventy Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs. Moreover, this Notice of Removal is made within one (1) year after the filing of the Complaint on May 25, 2020.

WHEREFORE, the above action now pending against Defendant, BJ's Wholesale Club, Inc., in the Supreme Court State of New York, New York County, is removed therefrom to this Honorable Court.

Dated: New York, New York
May 7, 2021

Respectfully submitted,

CHARTWELL LAW

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